

PATENT

Atty. Docket No. CDL-031
(1370/81)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Durkin *et al.*

SERIAL NUMBER: 09/731,496 GROUP NUMBER: 3742

FILING DATE: December 7, 2000 EXAMINER: F.H. Dahbour

TITLE: Method of Treating Disorders Associated with Sebaceous Follicles

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION UNDER 37 CFR 1.131

Sir:

We, Anthony J. Durkin, and Dilip Y. Paithankar, hereby declare as follows:

1. We are the named co-inventors of the subject matter claimed in U.S. patent application serial number 09/731,496, filed December 7, 2000, and entitled "Method of Treating Disorders Associated with Sebaceous Follicles."

2. We are familiar with the specification of the above-identified patent application, the pending claims, the claims as proposed in the enclosed Amendment and Response, the outstanding Office Action mailed from the U.S. Patent and Trademark Office on April 21, 2003, U.S. Patent No. 6,402,739 (the "Neev Patent") and U.S. Patent No. 5,810,801 (the "Anderson Patent"). In addition, we are familiar with the Examiner's assertion that currently pending claims 1-34 are unpatentable for being obvious to the skilled artisan under 35 U.S.C. § 103(a) based on the teachings of the Neev Patent in combination with those of the Anderson Patent.

3. We are submitting this Declaration to swear behind and thereby remove the Neev Patent as a reference against the claims currently pending in the instant application and the proposed claims in the enclosed Amendment and Response.

4. We understand that the patent application which issued as the Neev Patent was filed November 30, 1999. Attached hereto as Exhibits A and B are true copies of excerpts of a draft patent application, which we ultimately filed as a provisional patent application with the U.S. Patent and Trademark Office on December 10, 1999, i.e., less than two weeks after Neev filed the application that issued as the Neev Patent. The instant application claims the benefit of the filing date of the provisional patent application we filed December 10, 1999, which was accorded U.S. Serial No. 60/170,244. In particular, we attach as Exhibit A, copies of an excerpt from the draft patent application we were preparing prior to November 30, 1999, which shows the "Summary of the Invention" portion of the draft. In addition, we attach as Exhibit B, copies of another excerpt from the same draft patent application, which shows the claims portion of the draft. The provisional patent application we filed December 10, 1999 contains text either the same as or similar to the portions of the draft application attached hereto as Exhibits A and B.


5. We believe that we had reduced the claimed invention to practice in the United States prior to November 30, 1999, the filing date of the application that issued as the Neev Patent. In the alternative, we believe that we had conceived of the claimed invention in the United States prior to November 30, 1999 and that we had worked diligently to file our provisional patent application on December 10, 1999.

6. We further declare that all statements made herein of our knowledge are true and that all statements made on information and belief are believed to be true and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States

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Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: Oct. 19 2003



Anthony J. Durkin

Date: _____

Dilip Y. Paithankar

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Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: _____

Anthony J. Durkin

Date: 10/20/2003



Dillip Y. Paithankar